



The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

February 24, 2005

Mr. Ted Whitney
8 Whitney Road
Henniker, New Hampshire 03242

**CERTIFIED MAIL (7099 3400 0018 1290 2551)
RETURN RECEIPT REQUESTED
NOTICE OF PAST VIOLATION**

RE: Non-Conforming Open Burning

Dear Mr. Whitney:

On December 10, 2004, the New Hampshire Department of Environmental Services, Air Resources Division ("DES") was notified by Brad Simpkins, a Forest Fire Ranger for the New Hampshire Department of Resources and Economic Development ("DRED"), that an open burning incident had occurred at your property located at 8 Whitney Road, Henniker, New Hampshire (the "Property"). It was reported that non-conforming material had been burned.

On December 10, 2004, DES personnel met with Ranger Simpkins, Chief Keith Gilbert and members of the Henniker Fire Department ("HFD") at the Henniker Fire Station. Chief Gilbert stated that on the evening of December 9, 2004, the HFD responded to an odor complaint of burning plastic. The HFD found a fire burning on the Property, and observed you attempting to extinguish the fire. The HFD extinguished the fire. Due to darkness, the HFD could not determine what was in the burn pile.

On December 10, 2004, DES personnel, Ranger Simpkins, and HFD officials met with you at the Property to conduct an inspection in order to determine conformance with the N.H. Code of Administrative Rules, Env-A 100 *et seq.*, specifically, Env-A 1000, *Prevention, Abatement, and Control of Open Source Air Pollution* and RSA 125-C. During the inspection, DES personnel observed and photographed non-conforming material including one piece of charred wafer board, a charred mattress, charred household trash, charred plastic, two charred steel vehicle rims, and steel belts from radial tires. The burn pile was located on top of two loads of fill consisting of dirt, stones and shredded plastic from ground-up computers. Since the ground was snow covered at the time, you attempted to burn some wooden calf-houses on top of the piles of fill. You further stated that the fire became larger than you had anticipated, and ignited several nearby tires, as well as burning some of the plastic chips mixed in with the fill beneath the snow. The DES inspector pointed out the non-conforming material observed in the burn pile, and reviewed the rules relating to open burning with you. As a result of the inspection and information gathered, DES has determined that violations occurred.

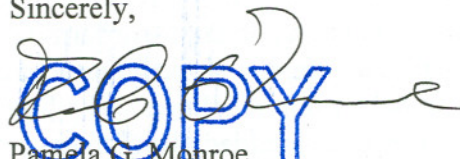
The purpose of this letter is to notify you of the violations discovered, as well as the requirements surrounding open burning, so that you can prevent future violations. The specific violations are as follows:

- Env-A 1001.05 outlines the type of burning that is permissible without authorization from DES. Specifically, Env-A 1001.05 (d) allows periodic on-site burning of brush by the landowner and allows the burning of untreated wood from the construction or demolition of a building. The burning of materials other than brush and untreated wood is a violation of Env-A 1000.
- Env-A 1001.03(a) defines "brush" as tree tops, limbs, saplings, and tree cuttings that are five inches in diameter or less.
- Env-A 1001.03(k) defines "untreated wood" as any timber, board, or sawn dimensional lumber, which has not been treated, coated, or preserved.
- RSA 125-N:4 and Env-A 1001.06 provide for the absolute prohibition of residential open burning of combustible domestic waste.

Since the burning of non-conforming materials has ceased, DES believes that no further action is required at this time in response to the listed violations. However, in the event that additional violations are identified, DES may take action, including issuing an administrative order, seeking administrative fines, and/or referring this matter to the New Hampshire Department of Justice for civil and/or criminal penalties.

If you believe that DES has cited these violations in error, or have questions regarding these matters, please contact Joseph Ritz at (603) 271-1391, Air Resources Division, Compliance Bureau. A current copy of the Air Resource Division rules can be obtained from the DES website at <http://www.des.state.nh.us/ard/ardrules.htm>, or by contacting the Public Information Center at (603) 271-2975.

Sincerely,


Pamela G. Monroe
Compliance Bureau Administrator
Air Resources Division

PGM/jwr

Enc.: Env-A 1001, *Open Burning*
Brochure, *Residential Trash Burning – What Every Homeowner Should Know*

cc: R. Kurowski, EPA Region 1
G. Hamel Legal Unit Administrator
B. Simpkins, DRED Forest Fire Ranger
Chief K. Gilbert, Henniker Fire Department
J. Damour, Chairman, Henniker Board of Selectmen
M. Guilfooy, NHDES-WMD
AFS # 330139777